



**TOWNSHIP OF GALLOWAY
DEPARTMENT OF COMMUNITY DEVELOPMENT
PLANNING AND ZONING BOARDS**

300 E. JIMMIE LEEDS ROAD GALLOWAY, NJ 08205
(609) 652-3700 EXT. 218 FAX: (609) 652-5259

Pamela K. Alleyne
Planning/Zoning Board Administrator

**MINUTES
GALLOWAY TOWNSHIP
ZONING BOARD OF ADJUSTMENTS
March 15, 2007**

Present: Richard Catando, Martha Gaines, Frank Gargione,
Carl Crowley and Anthony Leonard

Absent: Patrick Hathaway, Ron Huber, Mark Sykes & Lynn Fittipaldi

Minutes: February 15, 2007 Approved

Approval of Decision & Resolutions:

#3-07 Maxwell; #29-06 Bowen; #28-06 DeMarciso; #25-06(B) Gabriel

Application # 24-06 Hi Point Properties. Second and Jimmie Leeds Rd.

B. 979 L. 14.03 – 14.07. Use Variance & Prelim & Final Site Plan has been postponed until April 19, 2007. No further noticing is required.

Application #2-07 J&M Land Company. New York Rd. B. 1260.01 L. 19. Preliminary and Final Site Plan and Conditional Use has been postponed until April 19, 2007. No further noticing is required.

New Appeals:

#1-07 Kmetz/Callahan

B. 11173.18 L. 4. 502 Salem Way

Rear Yard Setback . Zone: Smithville PUD

Proposed: The applicant proposes to construct a 12'x14' sunroom to the rear of the property. The Smithville Architectural Control Committee has issued a letter in support of the applicant's request. The required setback is 10' the proposed setback will be 4'. No homes will ever be built to the rear of their property its open space.

The applicant presented the application.

No Public Comments

Motion to approve application #1-07 Kmetz/Callaghan; Rear Yard Setback was made by Crowley and Gaines 2nd the motion.

Those voting in favor: Crowley, Catando, Gargione, Gaines and Leonard

Begin at tape #1 count 182. End at tape# 1 count 341. 7:35pm – 7:45pm

#5-07 Sang Tran and Tina Huynh

B. 707 L. 7.02. 447 Upas Avenue

Rear Yard Setback Zone: R-1 (Residential)

Proposed: The applicant proposed to construct a 16'x28' addition to the existing house. Requires side yard is 40'. Proposed: 15'. The addition will have two bedrooms.

The applicant speaks little English therefore John Matkowsky represents the applicant.

Start tape #1 count 369. End tape #1 count 460.

The applicant has a handicap sister and three children sharing a bedroom. They need the space and it is cost efficient to add the rear of the house instead of adding a second floor, in which the handicap sister could not have access. The applicant intends to build the addition with John Matkowsky only pouring the foundation.

No Public Comments

Motion to approve application #5-07 Tran/Huynh; Rear Yard Setback was made by Gaines and Gargione 2nd the motion.

Those voting in favor: Catando Crowley, Gaines, Gargione and Leonard

Begin at tape #1 count 365. End at tape# 1 count 793. 7:45pm – 7:50p

#30-06 Slawomir Baginski.

B.945 L. 5.02. 504 Sixth Avenue

Interpretation and/or Use Variance

Zone: RC (Residential Compatibility)

Proposed: The applicant is requesting an interpretation of Section 233-8.E(8) of the ordinance relating to farm structures and uses. The applicant is proposing to construct two (2) 10'x30' pigeon coops/lofts on a property located Sixth Avenue in the Residential Compatibility (RC) zoning district.

Section 233-8.E(8) permits farm structures as an accessory use. Specifically this section states as follows: "Farm structures, including barns, pole barns, stables, chicken coops and dog runs. Any structure to be used for the purpose of housing animals must be located in the rear yard and be a minimum of 30 feet from property lines."

The applicant believes that this provision of the ordinance does not prohibit the placement of pigeon coops/lofts as a farm structure. The applicant believes that the ordinance provision highlighted above permits any structure to house animals, not just chicken coops or dog runs.

The applicant is requesting the Board to determine that pigeon coops/lofts are a permitted accessory structure/use in a residential zoning district. In the event the Board determines these are not a permitted accessory use/structure then the applicant is requesting a "D(1)" use variance.

The applicant is represented by Brian Callaghan, attorney.

Start tape #1 count 1004. End tape #1 count 1410.

Jon Barnhart, Planner. Ponzio Associates was hired to give independent opinion of the interpretation of the ordinance.

Start tape #1 count 1758. End tape #1 count 2678.

Slawomir Baginski, the applicant comments on having 100 breeder pigeons that will always stay in the coop. The offspring are trained to race. Which are about 50. During the months of March – November the pigeons are not let out because of the hawks. Racing season is August to the end of October. To train the young birds the group of 50 pigeons is let out during the months of end of April beginning of May once a day for usually an hour. They go out hungry and they return to be fed. The house is not occupied as of yet. He is the owner. He is waiting to bring the birds with him until he moves. If the application is denied then he will put the house up for sale. In Absecon he has the same number of pigeons and has never had a problem, or any residents complaining. Many Racing clubs meet and the pigeons are driven to a location where they are let loose and they fly home. Once they arrive home the time his noted and a winner is decided.

Professional Comments:

Start tape #1 count 1419. End tape #1 count 1640.

John recites NJ case law how a judge interpreted such a case dealing with pigeons. Stating that pigeon racing was in fact a hobby.

Start tape #1 count 1645. End tape #1 count 2009.

Tiffany offers guidance on the ordinance and the boards' decision. The board Must decide if this hobby is subordinate use to the principal structure. Question how many pigeons will be housed. If there are 10 pigeons there is clearly a difference than 100 pigeons. The extent of the use is then different. If you as a board interpret this as a permitted use then it will be permitted anywhere in the Township unless the ordinance is changed.

Public Comments:

Start tape #1 count 2699. End tape #1 count 2997.

Michael Chort, Absecon resident comments that the applicant currently lives less than 400 ' from his house in Absecon. He has over the years had no problems with the applicant and his hobby. He contends that the applicant takes excellent care of his pigeons; he has never seen a rodent. He is also the Real Estate agent who sold the applicant house in both Absecon and Galloway. When he releases the birds they usually circle the neighborhood about one dozen times then they return home. Or they fly elsewhere and then return home.

Start tape #1 count 2998. End tape #1 count 3102.

Mark Ward, Ridgewood Avenue resident comments that he is a pilot for the Coast Guard and that this location is in direct contact with the neighboring airport. Fears that the birds will fly into an engine and cause catastrophic damage.

Start tape #1 count 3109. End tape #1 count 3248.

Alan Overman, Eighth Avenue resident comments that the pigeons will attract predator birds and he is fearful that those birds will attract small pets or even children. Comments on whether it's a hobby or business. How many birds will present a problem? Who will monitor this?

Start tape #1 count 3278. End tape #1 count 3416.

Earnest Westcott, resident is concerned with disease, the property value depreciating and the close proximity to the neighboring houses.

Start tape #1 count 3420. End tape #1 count 3523.

John Applegate is not In favor of the application. States that the applicant sent him pictures that show dirty pigeon coops. Wanted to submit a petition of neighbors' objecting to the pigeon coops.

Start tape #1 count 3537. End tape #1 count 3948.

Ed Hand, Manahawkin. President of the Toms River Thoroughbred Racing Pigeons. His club has about 20 members. Comments on the sport of racing pigeons. He contends that the birds are athletes. And that the pigeons are worth considerable money therefore they are taken care of with great detail.

Start tape #1 count 3948. End tape #1 count 4063.

John Sommers, next-door neighbor has a chronic illness that can be aggravated by the birds and his close proximity.

Start tape #1 count 4064. End tape #1 count 4233.

Scott Ramisberger has pigeons and states that the issues presented by the neighbors are invalidated. He has raced pigeons for 31 years and most of his neighbors do not even know that he races pigeons.

Start tape #1 count 4234. End tape #1 count 4288.

Dan Burk, resident states that the lot is too small for this hobby. Not in favor of the application.

Start tape #1 count 4304. End tape #1 count 4385.

Bob Sprangler, resident states that coop do not belong in this residential neighborhood.

Applicants Closing Statement:

Start tape #1 count 4466. End tape #1 count 4753.

Brian Callaghan, applicant Attorney offers his closing remarks on the interpretation. A structure that houses animals is permitted in any area. As long as they meet the setback and is located in the rear yard. The ordinance does not state that if you do not fall under 1-11 in the ordinance then you are prohibited; it is just giving you a list of examples.

Section 233-8.E(8) permits farm structures as an accessory use. Specifically this section states as follows: "Farm structures, including barns, pole barns, stables, chicken coops and dog runs. Any structure to be used for the purpose of housing animals must be located in the rear yard and be a minimum of 30 feet from property lines."

Council Closing:

Start tape #1 count 4761. End tape #1 count 5034.

John summarizes the application. The board must interpret the ordinance. The board must decide or focus on section E(8) and if you read that section as a single primary sentence with a second sentence that modifies it or two primary sentences each being independent of each other. If you conclude that the two sentences are one primary and one modifying the primary sentence then your question is are pigeon coops the equivalent of chicken coops. If you conclude that the first sentence is its own principal permitted accessory and the second sentence is a second type of accessory use then you get caught up in the analysis as to whether any structure for an animal is a permitted accessory use. Assume if you wanted to house an alligator and you wanted to put it in a structure; therefore you would have to conclude that the use of that animal in that structure is a typical accessory. Is it a hobby? Is it a common hobby? And does it have detrimental impact? Once you identify the animal that is going to be housed in that structure you must still conclude that that is a subordinate use to a residence. You have heard case law and arguments as to why this hobby is a hobby and is subordinate to residential uses and not detrimental.

Board Summary:

Start tape #1 count 5037. End tape #1 count 5260.

Board members Catando, Gaines, Gargione, Leonard conclude that it is a primary sentence with a second sentence that modifies it. And that pigeon coops are the equivalent to chicken coops which are permitted.

Board member Crowley concludes that it is a primary sentence with a second sentence that modifies it. But pigeon coops are not the equivalent to chicken coops.

Motion to grant application #30-06 Baginski; Interpretation was made by Catando and Gargione 2nd the motion.

Those voting in favor: Catando, Gargione and Leonard

Those voting against: Crowley and Gaines

Begin at tape #1 count 820. End at tape# 1 count 4773. 8:00pm – 10:25pm

Meeting Adjourned

10:30pm

Pamela Alleyne, Administrator